

IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MARLENE JOHANSEN,)
Plaintiff,)
Counterclaim Defendant,) Case No. 04-11789-RCL
V.)
UNITED STATES OF AMERICA,)
Defendant,)
Counterclaim Plaintiff,)
V.)
NATIONAL CITY MORTGAGE CO.,)
and TIMOTHY BURKE,)
Counterclaim Defendants.)



THE ORAL DEPOSITION OF RALPH JOHANSEN, held pursuant to Notice, and the applicable provisions of the Federal Rules of Civil Procedure, before Marilyn Franklin, a Court Reporter and Notary Public, within and for the Commonwealth of Massachusetts, at the offices of Meilman and Costa, P.C., 70 Wells Avenue, Suite 200, Newton, Massachusetts, on Friday, May 27, 2005, commencing at 10:00 a.m.

ORIGINAL

APEX Reporting
(617) 426-3077

PRESENT:

On Behalf of the United States of America:

STEPHEN J. TURANCHIK, Trial Attorney, Tax Division
United States Department of Justice
P.O. Box 55/Ben Franklin Station
Washington, D.C. 20044
(202) 307-6565

On Behalf of the Witness:

D. SEAN McMAHON, ESQ.
Meilman & Costa
70 Wells Avenue, Suite 200
Newton, MA 02459

On Behalf of Marlene Johansen:

TIMOTHY J. BURKE, ESQ.
Timothy J. Burke & Associates
400 Washington Street, Suite 303
Braintree, MA 02184

1 Q And what did you do?

2 A Primarily travel counseling.

3 Q Is that different than a travel agent?

4 A Yes.

5 Q How so?

6 A A travel agent is trying to sell something. A travel
7 information officer was providing information on a
8 destination.

9 Q Like Vancouver, for example, or Saskatchewan?

10 A Yes.

11 Q Okay. And at some point in time, did your duties
12 change from the information officer?

13 A Yes.

14 Q And when was that?

15 A '79.

16 Q Okay. Keep in mind, in this deposition, there are no
17 right and wrong answers. It's whatever your
18 recollection is. And we are working on background, so
19 if you get a year wrong, it's not make or break.

20 I should also mention that after this deposition
21 you'll have an opportunity to review the transcript of
22 this deposition. You'll be able to make changes, not
23 only if there are typographical errors, which I don't
24 expect there to be any, but also to substance. So you
25 know what, it wasn't '75, it was '78, you'll have that

1 opportunity. So don't feel as though this is your only
2 time to give testimony in this regard.

3 With that in mind, in about '79 or so, your job
4 changed from information officer to something. What
5 was that something?

6 A I became the information officer for the motor coach
7 industry.

8 Q Can you flesh that out for me a little more?

9 A The motor coach industry is the buses that run tours
10 and charters, and I was responsible for exclusively
11 working with motor coach operators.

12 Q And how long did you stay in that job for?

13 A Two years.

14 Q And then what did you do?

15 A Became the meetings and convention officer.

16 Q And how long did you stay in that job?

17 If you're not sure about it? It could be four or
18 five years?

19 A Four or five years.

20 (Laughter.)

21 MR. McMAHON: The best of your recollection?

22 THE WITNESS: Yes.

23 Q BY MR. TURANCHIK: And what did you do next?

24 A I became the press officer.

25 MR. McMAHON: This is actually a job interview?

1 THE WITNESS: Yeah.

2 MR. TURANCHIK: I know. It might have been easier
3 if I'd asked you to bring your resume, and I apologize
4 for that.

5 Q BY MR. TURANCHIK: And how long were a press officer
6 for?

7 A Three to four years.

8 Q And what did you do next?

9 A I became assistant manager.

10 Q What was -- which department were you an assistant
11 manager for?

12 A The tourism department.

13 Q Were any of these -- well, let me back up.

14 Was the move from press officer to assistant
15 manager a promotion of sorts?

16 A Yes.

17 Q Were the other changes in jobs promotions or just side,
18 lateral moves?

19 A They're promotions.

20 Q Okay. And how long did you stay on as assistant
21 manager?

22 A Two or three years.

23 Q And then what did you do?

24 A Became manager.

25 Q And how -- and are you manager today?

1 A No.

2 Q How long did you stay manager for?

3 A Till they eliminated the position.

4 Q Okay. And then what did you become?

5 If I'm not understanding it properly, please fill
6 me in.

7 A Without going into a great deal of detail, the
8 positions up to the level of assistant manager, as a
9 U.S. citizen, I was allowed to hold. The assistant
10 manager and manager's position were foreign service
11 officers.

12 Q Mm-hm. Yeah.

13 A Of which I could not qualify for the position. To save
14 money, the government converted, first, the assistant
15 manager position to a locally engaged position, and I
16 was able to compete for it and get that.

17 They did the same thing with the manager's
18 position. Instead of having, paying for foreign
19 service officers, and to have continuity, they hired
20 locally. So previously I was not allowed to have those
21 positions.

22 The government eliminated the relationship with
23 the tourism department. We became what's called a
24 Crown Corporation.

25 Q Mm-hm. Do you remember when that happened?

1 A Well, we went from a special operation agency to a
2 Crown Corporation sometime in the late Nineties, I
3 believe.

4 Q Late Nineties, okay. So while you were still -- had
5 the functions of a manager, it was still a governmental
6 agency?

7 A Yes. We are still ---

8 Q Still a governmental agency?

9 A The similarity is to something an Amtrak, I guess ---

10 Q Mm-hm.

11 A --- is the best, or even the post office. There is a
12 certain budget given by the government.

13 Q Mm-hm.

14 A In our case, we have to match that with private sector,
15 so.

16 Q So let me get back to you. What you were doing as
17 opposed to what the government was doing, the Canadian
18 Government was doing.

19 By my numbers, you had the role of an assistant
20 manager from about '87 to '89 or so. Does that sound
21 about right?

22 A Yes.

23 Q And then you became -- you had the role of a manager
24 until about '91?

25 A No, it was later than that that I was -- I was still a

1 manager when we were going through the process of the
2 change in government.

3 Q Okay.

4 A So it ---

5 Q So you were manager through the late Nineties?

6 A Yes.

7 Q And how did your job change, if at all, in the late
8 Nineties?

9 A First of all, I lost all my staff.

10 Q Mm-hm.

11 A We were not allowed to be housed in the Canadian
12 Consulate.

13 Q Mm-hm.

14 A We were supposed to work from our home.

15 Q That must have been quite a drastic change.

16 A It was shocking when you're trying to deal with that,
17 going through a divorce at the same time.

18 Q That was my next question. Did that take place during
19 your divorce, during the time you were separated from
20 your wife?

21 A The process had started in probably '96.

22 Q Mm-hm.

23 A And ---

24 MR. McMAHON: And this is a process of switching
25 from -- to a Crown Corporation?

1 THE WITNESS: Yeah.

2 Q BY MR. TURANCHIK: And after the transfer was made to
3 the Crown Corporation, what was your job title?

4 A It eventually was agreed upon to be called manager of
5 leisure travel sales.

6 Q And how long were you -- let me back up.

7 Were your duties any different as a manager of
8 leisure travel sales from what they were in your
9 position as a manager before that?

10 A Yes.

11 Q How were they different?

12 A Previously, I had a staff to do a lot of my
13 traveling ---

14 Q Mm-hm.

15 A --- for me. Without having any staff, my travel
16 increased dramatically.

17 Q But were your job expectations or your kind of end
18 product at the end of the day, did that change at all?

19 A Yes. We did business differently with ---

20 Q How so?

21 A There was a change in focus, in terms of we developed
22 what we called a key account system ---

23 Q Mm-hm.

24 A --- where we rated the operators, tour operators ---

25 Q Mm-hm.

1 A --- as to the amount of business they were bringing to
2 Canada.

3 Q Mm-hm.

4 A We did a series of programs with the operators, based
5 on the amount of business that they were generating.

6 Q And did your job duties change -- have your job duties
7 changed at all since you became manager of leisure
8 travel services?

9 A That's not my title at the moment.

10 Q So when did that change?

11 A The title changed two years ago.

12 Q And has your job changed at all?

13 A The job has changed in that they've changed the focus
14 upon what we're doing.

15 Q By they, you mean the Canadian Government or the Crown
16 Corporation, one of those have changed the focus?

17 A Yes.

18 Q And what is your job title today?

19 A Director of leisure sales development.

20 Q And if it was about two years ago, it would be 2002,
21 2003?

22 A Mm-hm. Yes.

23 Q Thank you.

24 So just a -- as I'm looking over my notes, it
25 looks like you've been working for the Canadian

1 Government since about 1973?

2 A Yes.

3 Q Okay. During that time, has the Canadian Government
4 ever withheld taxes from your paychecks?

5 A No.

6 Q Okay. Since that time you've been responsible for
7 paying your own taxes?

8 A Yes.

9 Q When did you first start filing tax returns, federal --
10 back up.

11 When did you first start filing U.S. income tax
12 returns?

13 A 1966, '67 or something.

14 Q Were you working at the same time you were going to
15 Eastern Nazarene?

16 A Yes.

17 Q Okay. And as an independent -- well, let me back up.

18 Did the Canadian Government essentially treat you
19 as an independent contractor?

20 A Yes.

21 Q By that, they gave you -- well, they didn't give you a
22 1099 form, did they?

23 A No.

24 MR. TURANCHIK: Let's mark this as Exhibit 1.

25 (Johansen Deposition Exhibit

1 Q Okay. And do you know for how many year -- well, let
2 me ask it: At some point in time did you file your
3 1993 tax return?

4 A Yes.

5 Q And when was that?

6 A '97.

7 Q Okay. And were you late in filing your 1994 tax
8 return, as well?

9 A Yes.

10 Q And when did you file that?

11 A I filed them both together.

12 Q Okay. You filed '93 and '94 together?

13 A Yes.

14 Q Did you file those jointly with your wife?

15 (Pause.)

16 Q And I say that -- go ahead.

17 A I believe so.

18 Q Mm-hm.

19 A The '93 and '94 would have been joint filed. The '95
20 and later wouldn't have been joint filed.

21 Q Okay.

22 A I believe. Okay?

23 Q And I say that, is that consistent with -- even though
24 you were living apart at that point in '97, you still
25 would have filed a joint tax return?

1 A Ninety -- we had got ourselves into such a financial
2 hole at that point ---

3 Q Mm-hm.

4 A --- to be quite honest, we were hardly talking.

5 Q Okay. For your 1995 tax return, do you remember when
6 you filed that?

7 A I don't know. Steve would.

8 MR. McMAHON: This is just to the best of your
9 memory. We've already produced documents. I showed
10 the returns and he would, obviously, have access to the
11 dates that you filed.

12 THE WITNESS: Yeah.

13 MR. McMAHON: So if you don't remember, say so.

14 Q BY MR. TURANCHIK: If you don't remember ---

15 A I don't remember.

16 MR. McMAHON: I mean, that's fine.

17 Q BY MR. TURANCHIK: Was there a period of time in the
18 late Nineties that you had a whole bunch of years where
19 you didn't file your tax returns timely?

20 A Yes.

21 Q Why didn't you file your tax returns timely during
22 those years?

23 A I don't know that there's a simple answer. We were
24 financially strapped. I was told there was not enough
25 money to pay the bills and I should go make some more

1 money.

2 Q I understand. Do you understand there's a difference
3 between filing a tax return and actually paying the
4 taxes?

5 A I do.

6 Q When did you first come to that understanding?

7 Do you understand the question?

8 MR. McMAHON: I think that would speak for itself.
9 What you're talking about is an obligation to file
10 taxes and a separate obligation to pay taxes.

11 MR. TURANCHIK: Right.

12 MR. McMAHON: And I think his answer kind of
13 indicates that the preparing and filing of the return,
14 you obviously realize that there is a liability due,
15 and if you realize in the beginning that you don't have
16 the money to pay the liability, that would provide you
17 with a disincentive to complete the return.

18 MR. TURANCHIK: Let me ask Mr. Johansen that
19 question then.

20 Q BY MR. TURANCHIK: Were you ever advised that even if
21 you don't have the money to pay your taxes, that you
22 should still file your tax return?

23 A No.

24 Q Okay. You had mentioned a few moments ago that you
25 were told there wasn't enough money to pay the taxes.

1 Let me focus a little bit on the financial
2 circumstances of the Johansen household in the --
3 actually from the start.

4 In 1980 -- I'm actually going to pull it up to the
5 early Nineties. In the early Nineties, you were
6 working for the Canadian Tourism Board. Was Marlene
7 working in the early Nineties?

8 A Marlene went through a series of jobs. There were
9 periods where she worked, there were periods where she
10 didn't. I couldn't tell you exactly during which time
11 frames she was working and when she wasn't.

12 Q During your marriage, did Marlene ever have a job that
13 paid her more than \$20,000 per year?

14 A I honestly don't know the answer to that off the top of
15 my head.

16 Q Is it fair to say that during your marriage you were
17 the breadwinner in the Johansen household?

18 MR. McMAHON: Majority breadwinner?

19 A Majority, yes.

20 Q BY MR. TURANCHIK: All right. Who paid the bills in
21 the Johansen household in the middle Nineties?

22 A Marlene did.

23 Q And how did that work? Was money put into a joint bank
24 account?

25 A Yes.